

By: Haggerty

H.B. No. 1460

A BILL TO BE ENTITLED

AN ACT

relating to the licensing, acquisition, and regulation of
manufactured housing.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 11.432, Tax Code, is amended to read as
follows:

HOMESTEAD EXEMPTION FOR MANUFACTURED HOME. (a) For a
manufactured home to qualify for an exemption under Section 11.13
of this code, the application for the exemption must be accompanied
by a copy of the statement of ownership and location for the
manufactured home issued by the manufactured housing division of
the Texas Department of Housing and Community Affairs under
Section 1201.207, Occupations Code, showing that the individual
applying for the exemption is the owner of the manufactured home or
be accompanied by ~~[a verified copy of the purchase contract showing
that the applicant is the purchaser of the manufactured home]~~ a
photostatic copy of the current title page for said home displayed
on the computer website of the Texas Department of Housing and
Community Affairs. Alternatively, the taxing authority may rely
upon the computer records of the Texas Department of Housing and
Community Affairs.

(b) ~~[The land on which a manufactured home is located
qualifies for an exemption under Section 11.13 only if:~~

~~[(1) the manufactured home qualifies for an exemption~~

1 ~~as provided by Subsection (a), and~~

2 ~~[(2) the manufactured home is listed together with the~~
3 ~~land on which it is located under Section 25.08.]~~ Whether the owner
4 has elected to treat the home as real property or personal property
5 and whether the home is listed on the tax rolls with the real
6 property to which it is attached or separately, the consumer is
7 entitled to obtain the homestead exemptions provided by Section
8 11.13 of this code.

9 (c) In this section, "manufactured home" has the meaning
10 assigned by Section 1201.003, Occupations Code

11 SECTION 2. Section 31.072, Tax Code, is amended by adding
12 Subsection (i) to read as follows:

13 (i) Notwithstanding Subsection (a), if the property owner
14 requesting a collector to establish an escrow account under this
15 section is the owner of a manufactured home and the escrow account
16 is to be used solely to provide for the payment of property taxes
17 collected by the collector on the property owner's manufactured
18 home, the collector shall enter into a contract with the property
19 owner under this section.

20 SECTION 3. Section 32.03, Tax Code, is amended by amending
21 Subsections (a), (a-1), (a-2) and (b) and adding Subsections (c),
22 (d) and (e) to read as follows:

23 (a) ~~[Except as provided by Subsection (a-1),]~~ A ~~[a]~~ tax lien
24 may not be enforced against personal property transferred to a
25 buyer in ordinary course of business as defined by Section 1.201 (9)
26 of the Business & Commerce Code for value who does not have actual
27 notice of the existence of the lien. Once a valid tax lien has been

1 timely filed by the taxing authority with the Texas Department of
2 Housing and Community Affairs pursuant to the rules of the
3 department prior to the date of the transfer, the buyer is deemed to
4 have actual notice of the lien.

5 (a-1) A tax lien against a manufactured home may not be
6 enforced unless it has been recorded with the Texas Department of
7 Housing and Community Affairs as provided by Section 1201.219,
8 Occupations Code;

9 (1) before October 1, 2005; or

10 (2) not later than six months after the end of the year
11 for which the tax was owed.

12 (a-2) A person may not transfer title of a manufactured home
13 until all tax liens [~~perfected~~] on the home timely filed with the
14 Texas Department of Housing and Community Affairs have been
15 extinguished or satisfied and released as well as any personal
16 property taxes on the manufactured home which accrued on each
17 January 1 that falls within 18 months of the date of the sale. This
18 subsection does not apply to the sale of a manufactured home in
19 inventory.

20 (b) A bona fide purchaser for value or the holder of a lien
21 recorded on a manufactured home statement of ownership and location
22 is not required to pay any taxes that have not been recorded with
23 the Texas Department of Housing and Community Affairs. Unless a tax
24 lien has been filed timely with the Texas Department of Housing and
25 Community Affairs, no taxing unit, nor anyone acting on its behalf,
26 may use a tax warrant or any other method to attempt to execute or
27 foreclose on the manufactured home as a result of the unfiled tax

1 lien.

2 (c) A taxpayer shall have the right to designate which tax
3 year will be credited with a particular payment. If a taxpayer pays
4 all the amounts owing for a given year, the taxing unit shall issue
5 a receipt for the payment of the taxes for the designated year.

6 (d) If a person with an interest in the ownership of a
7 manufactured home believes that a collector or appraiser is acting
8 in disregard of this statute or of the provisions of Chapter 1201 of
9 the Occupations Code, the person may file a complaint with the
10 Comptroller. The office of the Comptroller will conduct an
11 administrative hearing to determine the validity of the complaint.
12 If the Comptroller finds that the collector or appraiser is
13 disregarding this statute or Chapter 1201 of the Occupations Code,
14 the Comptroller shall issue a mandate that the collector or
15 appraiser act in accordance with the Comptroller's mandate. The
16 Comptroller shall mail the mandate to the collector or appraiser by
17 United States Certified Mail. If the collector or appraiser fails
18 to comply with the Comptroller's mandate within seven days of the
19 receipt of the mandate, the Comptroller shall forward a complaint
20 to the Attorney General's office, which shall then file proceedings
21 to have the tax collector or appraiser held in contempt for failure
22 to obey the Comptroller's mandate. The District Court shall impose
23 such fines or other punishment as the Court deems appropriate to
24 punish the collector or appraiser for their failure to obey the
25 mandate of the Comptroller and to assure that the future actions of
26 the collector or appraiser will be in accordance with the
27 Comptroller's mandate.

1 (e) If personal property taxes on a manufactured home have
2 not been levied by the taxing unit, the taxing unit shall provide
3 the prospective buyer of the manufactured home with an estimated
4 amount of taxes computed by multiplying the taxable value of the
5 manufactured home, according to the most recent certified appraisal
6 roll for the taxing unit, by the taxing unit's adopted tax rate for
7 the preceding tax year. In order to enable the transfer of the
8 manufactured home, the tax collector shall accept the payment of
9 the estimated personal property taxes and issue a certification to
10 the Department of Housing and Community Affairs that the estimated
11 taxes are being held in escrow until the taxes are levied. Once the
12 taxes are levied, the tax collector shall apply the escrowed sums to
13 the levied taxes. At the time that the tax collector accepts the
14 payment of the taxes, the tax collector shall notify the taxpayer
15 that the payment of the estimated taxes is an estimate that may be
16 raised once the appraisal rolls for the year are certified. The tax
17 collector shall notify the new owner that the new owner of the
18 manufactured home may be liable for the payment of any difference
19 between the tax established by the certified appraisal roll and the
20 estimate actually paid.

21 (f) If at the time the prospective buyer seeks a
22 certification from the tax collector that taxes have been paid, the
23 tax collector determines that the manufactured home has been
24 omitted from the tax rolls of either or both of the two preceding
25 years by mistake, the tax collector will calculate the taxes due for
26 the omitted years by applying the tax rate for the omitted years to
27 the proposed sales price that the buyer is paying for the

1 manufactured home. Upon payment of the resulting sum, the tax
2 collector shall issue a certification to the Department of Housing
3 and Community Affairs that the taxes have been paid for the omitted
4 years. Even though the buyer of the manufactured home pays the taxes
5 calculated hereunder for the manufactured home which was omitted
6 from the tax rolls, the buyer shall have the right to protest the
7 value established by this provision using the protest of valuation
8 procedures established by the Tax Code. If the protest is
9 successful, the tax collector shall refund to the buyer all sums in
10 excess of the taxes which were owed based upon the revised
11 valuation.

12 (g) If the tax lien filed with the Department of Housing and
13 Community Affairs reflects a taxpayer name that is different from
14 the name of the owner of the manufactured home, the Department of
15 Housing and Community Affairs shall provisionally record the lien
16 on its records using the serial number or other identifying number
17 for the manufactured home. The Department of Housing and Community
18 Affairs shall notify the appraisal district of the disparity
19 between the name of the taxpayer and the owner of the home. The
20 taxing authority shall have sixty days from the date of the notice
21 to file an amended tax lien reflecting the taxpayer as the owner of
22 the home. The taxing authority shall notify both the taxpayer
23 originally reflected on the tax rolls and the owner of the
24 manufactured home reflected on the records of the Texas Department
25 of Housing and Community Affairs of the filing of the tax lien and
26 the disparity between the two names.

27 SECTION 4. Section 1201.003(15), Occupations Code, is

amended to read as follows:

(15) "Manufactured home" or "manufactured housing" means a HUD-code manufactured home or a mobile home or any structure that (1) regardless of size is designed for use as a dwelling when it is connected to the required utilities, (2) is built on a permanent chassis and (3) is not a modular home as defined in Section 1202, Occupations Code.

SECTION 5. Section 1201.003, Occupations Code, is amended by adding a definition to read as follows:

"New Manufactured home" means a home which is not a Used Manufactured home

SECTION 6. Section 1201.003, Occupations Code, is amended by adding a definition to read as follows:

"Used Manufactured home" means a home which has been occupied for use.

SECTION 7. Section 1201.003, Occupations Code, is amended by adding a definition to read as follows:

"Fund" means the homeowners' recovery fund established by the director under Subchapter I.

SECTION 8. Section 1201.008 Occupations Code, is amended by adding subsection (e) to read as follows:

(e) Notwithstanding any zoning or other law to the contrary, in the event that a manufactured home occupies a lot in a municipality, the owner of the manufactured home may move the manufactured home from its location and place another manufactured home on the same property, provided that the replacement is a newer manufactured home and is at least as large in living space as the

1 prior manufactured home.

2 SECTION 9. Section 1201.052(a), Occupations Code, is
3 amended to read as follows:

4 (a) The board [~~director~~] shall adopt rules[~~, issues orders~~]
5 and otherwise act as necessary to ensure compliance with the
6 purpose of this chapter to implement and provide for uniform
7 enforcement of this chapter and the standards code. The director
8 shall act as necessary to implement the rules adopted by the board
9 and to further the directions given by the board to ensure that all
10 persons comply with the provisions of this Section whether they are
11 licensed or not.

12 SECTION 10. Section 1201.053(a), Occupations Code, is
13 amended to read as follows:

14 (a) The board [~~director~~] shall adopt rules[~~, issue order,~~]
15 and otherwise act as necessary to:

16 (1) comply with the National Manufactured Housing
17 Construction and Safety Standards Act of 1974 (42 U.S.C. Section
18 5401 et seq.), including adopting and enforcing rules reasonable
19 required to implement the notification and correction procedures
20 provided by 42 U.S.C. Section 5414; and

21 (2) provide for the effective enforcement of all
22 HUD-code manufactured housing construction and safety standards in
23 order to have the state plan authorized by the National
24 Manufactured Construction and Safety Standards Act of 1974 (42
25 U.S.C. Section 5401 et seq.) approved by the secretary of housing
26 and urban development.

27 SECTION 11. Section 1201.058, Occupations Code, is amended

to read as follows:

The board shall establish the fees imposed under Sections 1201.055-1201.057 in amounts that are reasonable and necessary to cover the cost of administering this chapter. If the department's rules provide an option to file a document electronically, the department may charge a discounted fee for the electronic filing.

SECTION 12. Section 1201.105(a), Occupations Code, is amended to read as follows:

(a) The department may not issue or renew a license unless a bond or other security in a form prescribed by the director is filed with the department as provided by this subchapter. The bond or other security is payable to the trust fund except for any amounts which are due directly to the retailer under Section 1201.356(c), Occupations Code.

SECTION 13. Section 1201.106(a), Occupations Code, is amended to read as follows:

(a) An applicant for a license or a license holder shall file a bond or other security under Section 1201.105 for the issuance or renewal of a license in the following amount:

- (1) \$100,000 for a manufacturer;
- (2) \$50,000 for a retailer;
- (3) \$50,000 [~~(\$30,000)~~] for a rebuilder;
- (4) \$50,000 for a broker; or
- (5) \$50,000 [~~(\$10,000)~~] for an installer.

SECTION 14. Section 1201.162(a), Occupations Code, is amended to read as follows:

(a) Before the completion of a credit application in credit

1 sale and more than one day before the execution of a purchase
2 contract in a cash sale, the retailer or agent must provide to the
3 consumer the following statement that is printed in at least
4 12-point type and not attached to or combined with any other written
5 material:

6 "When buying a manufactured home, there are a number of
7 important considerations, including price, quality of
8 construction, features, floor plan, and financing alternatives.

9 "The United States Department of Housing and Urban
10 Development (HUD) helps protect consumers through regulation and
11 enforcement of HUD design and construction standards for
12 manufactured homes. Manufactured homes that meet HUD standards are
13 known as "HUD-code manufactured homes." The Texas Department of
14 Housing and Community Affairs regulates Texas manufacturers,
15 retailers, brokers, salespersons, installers, and rebuilders of
16 manufactured homes.

17 "If you plan to place a manufactured home on land that you own
18 or will buy, you should consider items such as:

19 "ZONING AND RESTRICTIVE COVENANTS. Municipalities or
20 subdivisions may restrict placement of manufactured homes on
21 certain lots, may prohibit the placement of homes within a certain
22 distance from property lines, may require that homes be a certain
23 size, and may impose certain construction requirements. You may
24 need to obtain building permits and homeowner association approval
25 before you place a manufactured home on a certain lot. Contact the
26 local municipality, county, and subdivision manager to find out if
27 you can place the manufactured home of your choice on a certain lot.

1 "WATER. Be sure that your lot has access to water. If you must
2 drill a well, contact several drillers for bids. If water is
3 available through a municipality, utility district, water
4 district, or cooperative, you should inquire about the rates you
5 will have to pay and the costs necessary to join the water system.

6 "SEWER. If your lot is not serviced by a municipal sewer
7 system or utility district, you will have to install an on-site
8 sewer facility (commonly known as a septic system). There are a
9 number of concerns or restrictions that will determine if your lot
10 is adequate to support an on-site sewer facility. Check with the
11 local county or a licensed private installer to determine the
12 requirements that apply to your lot and the cost to install such a
13 system.

14 "HOMEOWNER ASSOCIATION FEES. Many subdivisions have
15 mandatory assessments and fees that lot owners must pay. Check with
16 the manager of the subdivision in which your lot is located to
17 determine if any fees apply to your lot.

18 "TAXES. Your home will be appraised and subject to ad valorem
19 taxes as are other single family residential structures. These
20 taxes must be escrowed with your monthly payment, except that your
21 lender is not obligated to impose an escrow requirement in a real
22 property transaction involving a manufactured home if the lender is
23 a federally insured financial institution and does not otherwise
24 require the escrow of taxes, insurance premiums, fees, or other
25 charges in connection with loans secured by residential real
26 property. On closing, you will be notified of all provisions
27 pertaining to federal truth in lending disclosures.

1 "INSURANCE. Your lender may require you to obtain insurance
2 that meets lender requirements and protects your investment. You
3 should request quotes from the agent of your choice to obtain the
4 insurance.

5 "TYPES OF MORTGAGES AVAILABLE. The acquisition of a
6 manufactured home may be financed by a real estate mortgage or a
7 chattel mortgage. A real estate mortgage may have a lower interest
8 rate than a chattel mortgage.

9 "RIGHT OF RESCISSION. If you acquire a manufactured home, by
10 purchase, exchange, or lease-purchase, you may, not later than the
11 third day after the date the applicable contract is signed, rescind
12 the contract without penalty or charge."

13 SECTION 15. Section 1201.162(d) and (e), Occupations Code,
14 is amended by renumbering and amending Subsection (c) to read as
15 follows:

16 (b) ~~[(a)]~~ A federally insured financial institution or
17 lender approved or authorized by the United States Department of
18 Housing and Urban Development as a mortgagee with the direct
19 endorsement underwriting authority that fully complies with
20 federal Truth in Lending disclosures concerning the terms of a
21 manufactured housing transaction is exempt from the disclosure
22 provisions of this section.

23 (c) ~~[(e)]~~ The right of rescission described in subsection
24 (a) shall apply only to the sale transaction between the retailer
25 and buyer. Failure by the retailer to comply with the disclosure
26 provisions of this section does not affect the validity of a
27 subsequent conveyance or transfer of title of a manufactured home

1 or otherwise impair a title or lien position of a person other than
2 the retailer. Until three days after the retailer delivers a copy of
3 the notice required by subsection (a), the buyer shall continue to
4 have the right of rescission with regard to the retailer. The
5 buyer's execution of a signed receipt of a copy of the notice
6 required by subsection (a) shall constitute conclusive proof of the
7 delivery of the notice. If buyer grants a person other than the
8 retailer a lien on the manufactured home, the right of rescission
9 shall immediately cease upon the filing of the lien with the Texas
10 Department of Housing and Community Affairs.

11 SECTION 16. Section 1201.165, Occupations Code, is amended
12 to read as follows:

13 The consumer may modify or waive the right to rescind as well
14 as the time periods provided herein for disclosures prior to the
15 execution of the contract if the consumer determines that the
16 purchase of the manufactured home is needed to meet a bona fide
17 personal emergency. If the consumer has a bona fide personal
18 emergency that necessitates the immediate purchase of the
19 manufactured home, the consumer shall give the retailer a dated
20 written statement that describes the emergency, specifically
21 modifies or waives the notice periods and any right of rescission
22 and bears the signature of all of the consumers entitled to the
23 disclosures and right of rescission. In such event the retailer
24 shall immediately give the consumer all of the disclosures required
25 by the Occupations Code and sell the manufactured home without the
26 required waiting periods or the right of rescission. Printed forms
27 for this purpose are prohibited except in a county that has been

1 declared by the Governor to be a major disaster area. If the
2 Governor declares a county to be a major disaster area, the retailer
3 may use printed forms promulgated by the department. This exception
4 shall expire one year after the county has been declared a major
5 disaster area.

6 SECTION 17. Section 1201.205(5), Occupations Code, is
7 amended to read as follows:

8 (5) the physical address where [~~the county of this~~
9 ~~state in which~~] the home is installed for occupancy including the
10 name of the county and if different, the mailing address of the
11 owner of the home:

12 SECTION 18. Section 1201.206, Occupations Code, is amended
13 by renumbering the existing Subsections, amending Subsection (a)
14 and (c) and adding Subsection (f) and (g) to read as follows:

15 (a) [~~(b)~~] At the first retail sale of a manufactured home,
16 the retailer shall provide for the installation of the home and
17 ensure that the application for the issuance of a statement of
18 ownership and location is properly completed. The consumer shall
19 return the completed application to the retailer. The retailer
20 shall surrender to the department the original manufacturer's
21 statement of origin at the same time that the retailer applies for
22 the first Statement of Origin and Location.

23 (b) [~~(c)~~] Not later than the [~~30th~~] 45th day after the date
24 of the retail sale, the retailer shall provide to the department the
25 completed application for the issuance of a statement of ownership
26 and location.

27 (c) [~~(d)~~] Not later than the [~~30th~~] 45th day after the date

1 of each subsequent sale or transfer of a home that is considered to
 2 be personal property, the seller or transferor shall provide to the
 3 department a completed application for the issuance of a new
 4 statement of ownership and location. If the seller accepts a traded
 5 in manufactured home as part of the consideration for the sale of
 6 another manufactured home, the seller shall file a completed
 7 application for the issuance of a new statement of ownership and
 8 location reflecting the change of ownership of the traded in
 9 manufactured home from the prospective buyer to the seller. The
 10 seller shall file the application for the issuance of a new
 11 statement of ownership and location for the traded in manufactured
 12 home at the same time that the seller files the application for the
 13 issuance of a new statement of ownership and location for the
 14 manufactured home which was sold by the seller. If the seller is a
 15 retailer, the seller shall indicate on the application for the
 16 issuance of the new statement of ownership and location if the home
 17 has been added to the inventory of the retailer.

18 (d) [~~(e)~~] Ownership of a manufactured home does not pass or
 19 vest at a sale or transfer of the home until a completed application
 20 for the issuance of a statement of ownership and location is filed
 21 with the department.

22 (e) [~~(f)~~] If the owner of a manufactured home relocates the
 23 home, the owner shall apply for the issuance of a new statement of
 24 ownership and location not later than the 30th day after the date
 25 the home is relocated. The department shall require that the owner
 26 submit evidence that the home was relocated in accordance with the
 27 requirements of the Texas Department of Transportation.

1 (f) When the seller files an application for statement of
2 ownership and location for a used manufactured home that is not in a
3 retailer's inventory, the seller shall also file with the
4 department a statement from the Tax Assessor Collector that there
5 are no personal property taxes due on the manufactured home which
6 may have accrued on each January 1 that falls within 18 months prior
7 to the date of the sale.

8 (g) If the seller of the manufactured home to a consumer for
9 residential use fails to file with the department the application
10 for the issuance of a statement of ownership and location and the
11 appropriate filing fee within forty-five (45) days of the date of
12 the sale, the department may assess a penalty of at least ONE
13 HUNDRED DOLLARS (\$100.00). The department shall have the authority
14 to enforce the collection of any penalty from the seller through
15 judicial means. The department shall place on the application for
16 the statement of ownership and location the following legend in a
17 clear and conspicuous manner:

18 THE FILING OF AN APPLICATION FOR A STATEMENT OF OWNERSHIP AND
19 LOCATION LATER THAN FORTY-FIVE (45) DAYS AFTER THE DATE OF A SALE TO
20 A CONSUMER FOR RESIDENTIAL USE MAY RESULT IN A PENALTY OF AT LEAST
21 ONE HUNDRED DOLLARS (\$100.00) OR MORE.

22 SECTION 19. Section 1201.206, Occupations Code, is amended
23 by adding Subsection (h) to read as follows:

24 (h) When a properly completed notice of installation on the
25 department's promulgated form is filed that involves a secondary
26 move, it must be accompanied by and either:

27 (1) one true and correct copy of the original notice of

1 installation; or

2 (2) a certification that a true and correct copy of the
3 notice of installation, has been provided to the chief appraiser
4 for the county in which the home was installed. The delivery of the
5 copy of the notice may be accomplished by either certified mail or
6 by electronic mail of the electronically reproduced document in a
7 commonly readable format.

8 If the method specified in subsection(2) above is used to
9 report the installation, the department may adopt a discounted fee
10 for the filing of the notice of installation.

11 (i) In addition to providing each tax assessor-collector
12 with the monthly report required by Section 1201.220, the
13 department shall provide ,upon request, a tax assessor-collector
14 with one copy of any requested notice of installation.

15 SECTION 20. Section 1201.207 (c), Occupations Code is
16 amended to read as follows:

17 (c) Except with respect to any change in use, but subject to
18 Section 1201.2075, if the department has issued a statement of
19 ownership and location for a manufactured home, the department may
20 issue a subsequent statement of ownership and location for the home
21 only if all parties reflected in the department's records as having
22 an interest in the manufactured home give their written consent or
23 release their interest, either in writing or by operation of law.
24 Once the department issues a statement of ownership and location,
25 the department shall not alter the record of the ownership or lien
26 status of a manufactured home for any activity occurring prior to
27 the issuance of the statement of ownership and location without

1 either the written permission of the owner of record for the
2 manufactured home or court order.

3 SECTION 21. Section 1201.207, Occupations Code is amended
4 by adding subsection (d) to read as follows:

5 (d) Notwithstanding anything herein to the contrary, if the
6 consumer purchases a manufactured home from a licensed retailer in
7 the ordinary course of business, whether or not a statement of
8 ownership and location has been issued for the manufactured home,
9 the consumer is a bona fide purchaser for value without notice and
10 is entitled to ownership of the manufactured home free and clear of
11 all liens as well as a statement of ownership and location
12 reflecting the same upon payment by the consumer of the purchase
13 price to the retailer. If there is an existing lien on the
14 manufactured home perfected with the department, the owner of the
15 lien is entitled to recover the value of the lien from either the
16 retailer or from the Home Owner Recovery Fund, whichever the owner
17 of the lien chooses.

18 SECTION 22. Section 1201.219(b), Occupations Code, is
19 amended to read as follows:

20 (b) Except as provided by Subsection (a), a lien on a
21 manufactured home is perfected only by filing with the department
22 the notice of lien on a form provided by the department. The form
23 shall require the disclosure of the original dollar amount of the
24 lien as well as the name and address of the taxpayer that is
25 obligated to pay the taxes. The department shall disclose on its web
26 site (1) the date of each lien filing, (2) the original amount of the
27 lien claimed by each filing and (3) that the dollar amount shown

1 does not include additional sums including interest, penalties and
2 attorney fees. The recordation of a lien with the department is
3 notice to all persons that the lien exists. Except as expressly
4 provided by Chapter 32, Tax Code, a lien recorded with the
5 department has priority, according to the chronological order of
6 recordation, over another lien or claim against the manufactured
7 home.

8 SECTION 23. Section 1201.352, Occupations Code, is amended
9 by adding (d) to read as follows:

10 (d) Within 30 days after the installation of the home, the
11 retailer shall deliver to the consumer a copy of the warranty given
12 by the licensed installer.

13 SECTION 24. Section 1201.353, Occupations Code, is amended
14 to read as follows:

15 (a) The consumer shall give written notice to the
16 manufacturer, installer or retailer, as applicable, of a need for
17 warranty service or repairs.

18 (b) Written notice to the department is notice to the
19 manufacturer, installer or retailer.

20 SECTION 25. Section 1201.354, Occupations Code, is amended
21 to read as follows:

22 The manufacturer, installer or retailer, as applicable,
23 shall take appropriate corrective action within a reasonable period
24 as required by department rules to fulfill the written warranty
25 obligation.

26 SECTION 26. Section 1201.355, Occupations Code, is amended
27 to read as follows:

1 (a) If the manufacturer, installer or retailer does not
2 provide the consumer with proper warranty service, the consumer
3 may, at any time, request the department to perform a consumer
4 complaint home inspection. The department may not charge a fee for
5 the inspection.

6 (b) On payment of the required inspection fee, the
7 manufacturer, installer or retailer may request the department to
8 perform a consumer complaint home inspection if the manufacturer,
9 installer or retailer:

10 (1) believes the consumer's complaints are not covered
11 by the warranty of the manufacturer, installer or retailer, as
12 applicable;

13 (2) believes that the warranty service was properly
14 provided; or

15 (3) disputes responsibility concerning the warranty
16 obligation.

17 (c) The department shall perform a consumer complaint home
18 inspection not later than the 30th day after the date of receipt of
19 a request for the inspection.

20 SECTION 27. Section 1201.356, Occupations Code, is amended
21 to read as follows:

22 (a) Not later than the 10th day after the date of a consumer
23 complaint home inspection, the department shall send a written
24 report and any order to the consumer, manufacturer, installer and
25 retailer by certified mail, return receipt requested.

26 (b) The report shall specify:

27 (1) each of the consumer's complaints; and

1 (2) whether the complaint is covered by either the
2 manufacturer's, installer or retailer's warranty and, if so, which
3 of those warranties.

4 (c) The director shall issue to the manufacturer, installer
5 or retailer an appropriate order for corrective action by the
6 manufacturer, installer or retailer, specifying a reasonable
7 period for completion of the corrective action. On new manufactured
8 homes, both the installer and retailer are responsible for the
9 warranty of installation. If the department determines that a
10 complaint is covered by the installation warranty, the director
11 shall issue the order to the installer for the corrective action. If
12 the installer fails to perform the corrective action, the installer
13 shall be subject to the provisions of Section 1201.357 of the
14 Occupations Code. In that instance, the director shall issue the
15 same order for corrective action to the retailer with a new time
16 frame for compliance. If the retailer is compelled to perform
17 corrective action because of the failure of the installer to comply
18 with the director's order, the retailer may seek reimbursement from
19 the installer. If the installer does not pay the reimbursement
20 within 30 days, the retailer may seek reimbursement from the bond of
21 the installer.

22 (d) The department may issue an amended report and order if
23 all parties receive notice of and are given an opportunity to
24 respond to that report and order. The amended report and order
25 supersede the initial report and order.

26 (e) The manufacturer, retailer, or installer shall comply
27 with the report and order of the director.

SECTION 28. Section 1201.357, Occupations Code, is amended to read as follows:

(a) If the manufacturer, installer or retailer, as applicable, fails to provide warranty service within the period specified by the director under Section 1201.356, the manufacturer, installer or retailer must show good cause in writing as to why the manufacturer, installer or retailer must show good cause in writing as to why the manufacturer, installer or retailer failed to provide the service.

(b) If the manufacturer, installer or retailer, as applicable, fails or refuses to provide warranty service in accordance with the department order under Section 1201.356, the director shall hold a hearing at which the manufacturer, installer or retailer must show cause as to why the manufacturer's, installer's or retailer's license should not be suspended or revoked.

(c) If the manufacturer, installer or retailer is unable to provide warranty service in accordance with the department order under Section 1201.356 as a result of an action of the consumer, the manufacturer, installer or retailer must make that allegation in the written statement required by Subsection (a). The department shall investigate the allegation, and if the department determines that the allegation is credible, the department shall issue a new order specifying the date and time of the proposed corrective action. The department shall send the order to the consumer and the manufacturer, installer or retailer, as applicable, by certified mail, return receipt requested. If the consumer refuses to comply

1 with the department's new order, the manufacturer, installer or
2 retailer, as applicable:

3 (1) is discharged from the obligations imposed by the
4 relevant department orders;

5 (2) has no liability to the consumer; and

6 (3) is not subject to an action by the department for
7 failure to provide warranty service.

8 SECTION 29. Section 1201.358, Occupations Code, is amended
9 to read as follows:

10 (a) Failure by the manufacturer, installer or retailer to
11 show good cause under Section 1201.357(a) is a sufficient basis for
12 suspension or revocation of the manufacturer's, installer's or
13 retailer's license.

14 (b) If after the hearing under Section 1201.357(b), the
15 director determines that the order under Section 1201.356 was
16 correct in the determination of the warranty obligation of the
17 manufacturer, installer or retailer, failure or refusal by the
18 manufacturer, installer or retailer to comply with the order is a
19 sufficient cause for suspension or revocation of the
20 manufacturer's, installer's or retailer's license. If the director
21 determines that the order was incorrect regarding the obligation,
22 the director shall issue a final order stating the correct
23 obligation and the right of the manufacturer, installer or retailer
24 to indemnification from the other.

25 (c) The director may issue an order:

26 (1) directing a manufacturer, installer or retailer
27 whose license is not revoked and who is not out of business to

1 perform the warranty obligation of a manufacturer, installer or
2 retailer whose license is revoked or who is out of business; and

3 (2) giving the manufacturer, installer or retailer
4 performing the obligation the right of indemnification against the
5 other.

6 (d) A manufacturer, installer or retailer entitled to
7 indemnification under this section is a consumer for purposes of
8 Subchapter I and may recover actual damages and attorney's fees
9 from the trust fund.

10 SECTION 30. Section 1201.401, Occupations Code, is amended
11 to read as follows:

12 Manufactured Homeowners' Recovery [~~Trust~~] Fund

13 The manufactured homeowners' recovery fund is an account [~~in~~
14 ~~the general revenue fund~~] held in trust for carrying out the
15 specific purposes of the fund.

16 SECTION 31. Section 1201.551(a)(3), Occupations Code, is
17 amended to read as follows:

18 (3) failed repeatedly to [~~timely~~] file with the
19 department [~~provide to a consumer an~~] completed applications for a
20 statement of ownership and location within forty five (45) days of
21 either the date of the sale of a manufactured home as required by
22 1201.206 or the date of the installation, whichever comes later
23 [~~and any information necessary to complete the application~~]:

24 SECTION 32. Section 1201.605, Occupations Code, is amended
25 by adding Subsection (c), (d), (e), (f), (g) and (h) to read as
26 follows:

27 (c) In addition to all of its other authority, for each

1 violation of Subsection (a) above, the board may assess against a
2 licensee who either fails to take action required by this Chapter or
3 takes an action prohibited by this Chapter, an administrative
4 penalty in an amount not to exceed:

- 5 (1) \$1,000 for the first violation;
- 6 (2) \$2,000 for the second violation; and
- 7 (3) \$4,000 for each subsequent violation.

8 (d) The board may assess against any person who is not a
9 licensee under this Chapter, who either fails to take action
10 required by this Chapter or takes an action prohibited by this
11 Chapter, an administrative penalty not to exceed \$10,000 for each
12 violation of this Chapter and:

- 13 (1) reasonable attorney's fees;
- 14 (2) administrative costs;
- 15 (3) witness fees;
- 16 (4) investigative costs, and;
- 17 (5) deposition expenses.

18 (e) A person who is not exempt under this chapter and who
19 acts as a manufacturer, broker, installer, retailer or salesperson
20 without first obtaining a license required under this chapter
21 commits an offense. An offense under this subsection is a Class B
22 misdemeanor. A second or subsequent conviction for an offense
23 under this subsection shall be punished as a Class A misdemeanor.

24 (f) A person who received money, or the equivalent of money,
25 as a fee or profit because of or in consequence of the person acting
26 as a manufacturer, broker, installer, retailer or salesperson
27 without an active license or being exempt under this chapter is

1 liable for damages in an amount that is not less than the amount of
2 the fee or profit received and not to exceed three times the amount
3 of the fee or profit received, as may be determined by the court. An
4 aggrieved person may recover damages under this subsection in a
5 court.

6 (g) If the director has reasonable cause to believe that a
7 person who is not licensed or exempt under this chapter has engaged
8 in an act or practice for which a license is required under this
9 chapter, the director may issue without notice and hearing an order
10 to cease and desist from continuing a particular action or an order
11 to take affirmative action, or both, to enforce compliance with
12 this chapter. The order shall contain a reasonably detailed
13 statement of the facts on which the order is made. The order may
14 assess an administrative penalty in an amount not to exceed \$1,000
15 per day for each violation and may require a person to pay to a
16 consumer any compensation received by the person from the consumer
17 in violation of this chapter. If a person against whom the order is
18 made requests a hearing, the director shall set and give notice of a
19 hearing before the director or a hearings officer. The hearing
20 shall be governed by Chapter 2001, Government Code. An order under
21 this subsection becomes final unless the person to whom the order is
22 issued requests a hearing not later than the 30th day after the date
23 the order is issued.

24 (h) If a hearing has not been requested under Subsection (e)
25 not later than the 30th day after the date the order is made, the
26 order is considered final and not appealable. The director, after
27 giving notice, may impose against a person who violates a cease and

1 desist order, an administrative penalty in an amount not to exceed
2 \$1,000 for each day of a violation. In addition to any other remedy
3 provided by law, the director may institute in district court a suit
4 for injunctive relief and to collect the administrative penalty. A
5 bond is not required of the director with respect to injunctive
6 relief granted under this section. A penalty collected under this
7 subsection shall be deposited in the fund.

8 SECTION 33. Section 347.254 is amended by adding (d) to read
9 as follows:

10 (d) The escrow requirements of Subsection (a) does not apply
11 if the consumer has established an escrow account with the
12 collector pursuant to Section 31.072 of the Tax Code.

13 SECTION 34. Section 347.403, Finance Code, is amended to
14 read as follows:

15 Sec. 347.403. AMOUNTS THAT MAY BE RECOVERED BY REAL
16 PROPERTY OWNER. In addition to the recovery of the rental charges
17 from the tenant, the owner of real property who is required to
18 retain legal counsel to recover the amounts subject to the
19 possessory lien under Section 347.402 is entitled to recover from
20 the tenant:

- 21 (1) other actual damages;
22 (2) attorney's fees; and
23 (3) court costs.

24 The owning of a security interest in a manufactured home does
25 not create an obligation of the creditor to pay rental of real
26 property on which the home is located nor any other damages solely
27 because of the existence of the security interest.

1 If the owner of a security interest in a manufactured home
2 takes no action with regard to the manufactured home, the owner of
3 the security interest shall not be liable to either the owner of the
4 real property or the owner of the manufactured home for any damages
5 accruing with regard to real property on which the manufactured
6 home is located. The creation of the possessory lien as described in
7 Section 347 shall take precedence over all perfected liens on the
8 manufactured home other than tax liens. As to all parties other than
9 the owner of the manufactured home and any person that executed the
10 lease agreement for the real property, the owner of the real
11 property shall look exclusively to the guarantor, co-signer, other
12 collateral and the sale of the manufactured home to recover the
13 owner's damages related to the rental of the real property on which
14 the manufactured home is located.

15 SECTION 35. This Act takes effect immediately if it
16 receives a vote of two-thirds of all the members elected to each
17 house, as provided by Section 39, Article III, Texas Constitution.
18 If this Act does not receive the vote necessary for immediate
19 effect, this Act takes effect September 1, 2007.